

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)	DIUC STATEMENT
)	IN SUPPORT OF
Application of Daufuskie Island Utility)	PROPOSED NOTICE
Company, Inc. for Approval of an)	
Adjustment for Water and Sewer Rates,)	
Terms and Conditions.)	
_____)	

On February 25, 2021, this Commission approved a Settlement Agreement between and among the Parties¹ to this proceeding. In proposing the Commission accept the Settlement Agreement, Commissioner Ervin moved as follows:

After hearing the testimony and representations of the parties and their respective attorneys, and also after hearing the sworn testimony of ORS' representative, Ms. Hipp, and examining them concerning the settlement in this matter, I move that the Commission formally approve the Settlement Agreement, as outlined on the record, between and among the Company, the three Daufuskie Island property owners' associations, and the Office of Regulatory Staff.

* * *

I further, as part of the motion, would require that, prior to sending out the notice to customers, that ORS be given an opportunity to review the notice and approve it, and then notify us in writing that it has been approved and show copies to all parties, prior to submission to the customers.

Directive Approving Settlement, February 25, 2021 at 1 ("the Directive").

On March 2, 2021, pursuant to the terms of the Directive, DIUC provided ORS with

¹ The Settlement Agreement filed with the Commission on February 18, 2021, is between and among DIUC, the South Carolina Office of Regulatory Staff ("ORS"); and the "POAs" or "Intervenors" (Haig Point Club and Community Association, Inc. ("HPCCA"), Melrose Property Owner's Association, Inc. ("MPOA"), and Bloody Point Property Owner's Association ("BPPOA"). All signatories to the Settlement Agreement are collectively referred to herein as the "Parties" or sometimes individually as a "Party."

DIUC's proposed notice for review. Over the following ten days ORS and DIUC conferred multiple times and exchanged multiple drafts and potential revisions. DIUC also created additional Schedules to be included with the notices. However, ORS and DIUC were unable to agree on a final version of the notice.

On March 12, 2021, DIUC filed its Proposed Notice with Schedules I and II. A copy of the Proposed Notice is attached hereto as Exhibit A. As demonstrated by Exhibit A, DIUC's Proposed Notice includes thorough explanations of all necessary information:

I. Notice of Settlement

This section of the Notice explains that:

- ♦ The Commission has approved the Parties' Settlement Agreement;
- ♦ New rates will be effective March 1, 2021;
- ♦ **Schedule I** illustrates the new water and sewer availability rates, and the new rates that will be applied to customers' water and sewer usage to calculate their future quarterly bills.

II. Notice of Ongoing Proceedings

This section of the Notice explains that:

- ♦ The docket remains open for the Commission to consider DIUC's request to collect "reparations" through one-time surcharges to be added to customer bills;
- ♦ The calculation of the potential surcharge amounts for each customer depends on each account's specific usage history, when the Commission enters its decision on the reparations request, and whether there are any appeals with or without additional remand proceedings;
- ♦ As a guide to customers, DIUC has calculated the average amount for each type of the customers' surcharges and provided the same in **Schedule II**, which assumes a final decision before DIUC's January 1, 2022 billing; and
- ♦ Any customer may contact the DIUC office to request a calculation their accounts' potential surcharge.

III. Opportunity to be Heard

This section of the Notice explains that:

- ♦ Any additional entity or person who wishes to participate in the future proceedings in this matter as a party of record should file Petition to Intervene;

- ♦ Any person who seeks to intervene and who wishes to testify and present evidence at a hearing, if scheduled, should provide written notice; and
- ♦ Additional information is available by telephone in the Commission by visiting www.psc.sc.gov.

On March 16, 2021, ORS filed a letter setting forth its two principal concerns with DIUC's Proposed Notice.

First, ORS requests the Notice include a date by which parties must intervene. DIUC is more than willing to fill in that date but had previously left it blank to be coordinated with the mailing of the Notice. DIUC proposes the deadline be thirty (30) days from mailing of the Notice. That should resolve this issue.

Second, ORS asserts that the averages included in **Schedule II** and the Notice's invitation for concerned customers to contact DIUC for account-specific information are insufficient. Instead, ORS asks the Commission to require DIUC "indicate the maximum amount that any one DIUC customer may be charged by a Reparation Surcharge." ORS Letter to Commission, March 16, 2021. This critique of the Proposed Notice is unsupported and unnecessary.

ORS is obligated by the Settlement Agreement to participate in a briefing process whereby the Parties will "present their respective positions to the Commission regarding the DIUC request for reparations." Settlement Agreement at ¶8.b. By asking the Commission to pre-calculate a maximum now, ORS is asking the Commission to pre-rule that no matter when a final order or appellate decision is entered on the reparations issue, DIUC is limited to recovering only the amount ORS wants calculated now. ORS is fully aware that DIUC seeks an award of interest to be calculated as of the date of the final decision on the surcharges. By asking for a maximum to be imposed now, ORS is improperly asking the Commission to arbitrarily limit DIUC before the matter is briefed pursuant to the Settlement Agreement.

ORS's critique that the Notice must include a maximum amount for surcharges likewise ignores the fact that what ORS asks is impossible. DIUC cannot comply with providing a maximum until the effective date of the surcharges is established thereby allowing the interest to be determined for each customer. The Settlement Agreement itself supports this fact by including a process whereby ORS is allowed to object to any calculation at the proper time – after a final decision is entered and DIUC calculates the totals due. The Settlement Agreement unambiguously states:

Should the Commission issue an Order approving DIUC's proposed method of reparations and timing of billing surcharges, DIUC shall submit the calculation of the amount of the surcharges to individual customers for review by ORS. If there is a dispute as to the amount of the surcharges and their implementation, the Parties agree to proceed expeditiously to an evidentiary hearing to determine the appropriate amount of surcharges.

Settlement Agreement at ¶8.d. ORS is fully aware that the proper time for calculating the specific amounts due is after a final decision, which is the time ORS negotiated in the Settlement Agreement to conduct such a review. The Commission should not allow ORS to rewrite this provision after ORS agreed to the same and supported it with sworn testimony before the Commission.

The ORS request that the Notice include “the maximum amount that any one DIUC customer may be charged by a Reparation Surcharge” also implies that it is the usual and customary practice for customers to be provided notice of the maximum bill they might face under a schedule of new rates. That is not how noticing works in any utility case. First, the reparation surcharges sought are here not rates for service; instead, the charges represent corrections of the limited rates previously permitted by the Commission's past rate decisions. Second, as the Commission is aware, a utility seeking to increase its rates only provides notice to customers of the rates to be applied to the units used by a customer. Customers are not provided any sort of

maximum amount the customer might be charged under the new rates. So, even if the reparations sought here were rates, which they are not, there is no precedent for ORS's request that the Notice here include an arbitrarily calculated maximum or that it is ever expected that customers be provided a maximum.

The Proposed Notice submitted by DIUC and attached here as Exhibit A is complete and provides customers with the information about the Settlement Agreement, the ongoing proceedings as to reparations, and provides not only an opportunity to be heard but includes instructions for how to participate in future proceedings. The Proposed Notice is consistent with the terms of the approved Settlement Agreement, it is accurate and complete, and it should be approved by the Commission.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

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March 19, 2021
Charleston, South Carolina